IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

Crl.Rev.Pet.No. 391 of 1997

CRA.290/1996 of V ADDL.SESSIONS COURT, ERNAKULAM
CC.27/1995 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOCHI

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REVN. PETITIONER/APPELLANT/ACCUSED:

K.F.SIMON, S/O FRANCIS, KUMMAYAPARAMBIL HOUSE, PANAYAPPILLY, COCHIN - 2, MARXON LITTLE FABRICS, KOOVAPADAM MARKET, COCHIN - 2.

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENTS/RESPONDENTS/COMPLAINANT:

1. T.V.PREMCHAND, THARAPARAMBIL HOUSE, PANAYAPPILLY, COCHIN - 682 002.

2. STATE OF KERALA REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SMT.C.G.BINDU
SMT.C.G.AJITHA

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 08/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P. Balachandran, J.

Crl.R.P.No. 391 of 1997

ORDER

Revision petitioner is the accused in C.C.No. 27/95 on the file of the Judicial First Class Magistrate's Court-II, Kochi. He was convicted for offence under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act') and was sentenced thereunder to pay a fine of Rupees twenty thousand and in default to undergo simple imprisonment for three months, vide common judgment in C.C.Nos.651/94, 723/94 and 27/95. He challenged the conviction in Crl.A.No.290/96. But, the appellate court, vide common judgment in Crl.A. Nos.275/96, 289/96 and 290/96 dismissed the appeal, confirming the conviction and sentence passed against him by the learned Magistrate. Hence, this revision.

2. When the matter came up for final hearing before me, the learned counsel for the petitioner submitted that there is, practically, no legal ground to be urged, so as to enable this Court to consider the matter afresh in revision and that, therefore, he is not advancing any arguments on the merits of the case, impugning the conviction for offence under Section 138 of the Act. But, all the same, he points out that the learned Magistrate had jurisdiction to impose fine only upto Rupees five thousand and that fine of Rupees twenty thousand imposed by the learned Magistrate and confirmed by the Sessions Court is illegal and improper and deserves to be set aside.

3. It is contended by the counsel for the respondents that the connected cases were being remanded for imposing proper sentence, awarding compensation in lieu of fine and that, therefore, this case also may be remitted back to the trial court, confirming the conviction, so that the

learned Magistrate can impose proper sentence. This case is one of the year 1995, filed as C.C.No. 27/95. I do not propose to remit the case back after twelve years. Imposition of fine of rupees five thousand with default sentence will, in the circumstances of the case, be sufficient punishment.

4. In the result, I confirm the conviction of the petitioner for offence under Section 138 of the Act, but modify the sentence, by reducing the fine amount to Rupees five thousand. The sentence awarded by the courts below in default of payment of fine is maintained as such. Fine, if realised, shall be paid over to the first respondent/ complainant under Section 357(1) Cr.P.C.

This revision is disposed of as above.

8th January, 2007 (K.P.Balachandran, Judge)

tkv

K.P.Balachandran, J.

Crl.R.P.No.391 of 1997

ORDER

8th January, 2007